

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

JUN 16 2020

Clerk, U.S. District Court
District Of Montana
Missoula

ANTHONY L. EVANS,

Plaintiff,

vs.

TRANSPORTATION SECURITY
ADMINISTRATION (TSA) and
SUPERVISORY TRANSPORTAION
SECURITY OFFICER (STSO)
MICHAEL ELLIS,

Defendants.

CV 19-33-DLC

ORDER

Before the Court is the Order and Findings and Recommendations of United States Magistrate Judge John Johnston. (Doc. 20.) Based on Plaintiff Anthony L. Evans' failure to prosecute this matter, Judge Johnston recommends dismissal pursuant to Federal Rule of Civil Procedure 41(b). (*Id.*) Judge Johnston entered his Findings and Recommendations on May 19, 2020, and Evans has not objected. Consequently, Evans waives his right to de novo review, 28 U.S.C. § 636(b)(1)(C), and the Court reviews for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error is "significantly deferential" and exists if the Court is left with a

“definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).


Following its review of Judge Johnston’s Findings and Recommendations, the Court finds no clear error in his determination that sua sponte dismissal is appropriate in this case. Balancing the five factors set out in *Pagtalunan v. Galaza*, the Court agrees that all but one weighs in favor of dismissal. *See* 291 F.3d 639, 642 (9th Cir. 2002). As Judge Johnston explains, while public policy favors disposition of this case on its merits, dismissal for failure to prosecute is nevertheless proper here based on: the public’s interest in expeditious resolution of litigation; the Court’s need to manage its docket; the risk of prejudice to Defendants as litigation is further protracted by Evans’ failure to litigate; and the unavailability of less drastic alternatives. (*See* Doc. 20 at 2–4.) In light of Judge Johnston’s April 6, 2020 Order to Show Cause (Doc. 19) and the explicit notification of the right to object to the Findings and Recommendations (Doc. 20 at 5), Evans has had sufficient opportunities to explain to this Court why it should not dismiss his case—opportunities he has not taken.

Accordingly, reviewing for clear error, IT IS ORDERED that the Court ADOPTS Judge Johnston’s Findings and Recommendations (Doc. 20) IN FULL. Consequently, IT IS ORDERED that this matter is DISMISSED pursuant to

Federal Rule of Civil Procedure 41(b). IT IS FURTHER ORDERED that all pending motions are DENIED AS MOOT.

The Clerk of Court shall enter judgment pursuant to Federal Rule of Civil Procedure 58 in favor of Defendants and against Plaintiff Evans. The docket shall reflect that this Court CERTIFIES, pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure, that any appeal of this decision would not be taken in good faith.

DATED this 16th day of June, 2020.



Dana L. Christensen, District Judge
United States District Court